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Commissioner for Patents  
P.P. Box 1450  
Alexandria, VA 22313-1450  
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On: January 17, 2005

By:

*Margaret A. Powers*  
Margaret A. Powers

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

Torben Halkier *et al.*

Application No: 10/756,813

Filed: January 12, 2004

For: A METHOD FOR PREPARING  
MODIFIED POLYPEPTIDES

Examiner: Unassigned

Art Unit: Unassigned

**PETITION FOR  
RECONSIDERATION OF  
PETITION UNDER 37 CFR §  
1.53(e)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Mail-Stop: PETITIONS

Dear Sir:

Applicants hereby petition for reconsideration of the Decision dated December 30, 2004 to dismiss the Petition Under 37 CFR § 1.53(e) ("Petition") submitted by Applicants in the above-referenced application on October 20, 2004. The Petition requested withdrawal of the Notice of Omitted Item(s) in a Nonprovisional Application (Notice) mailed September 16, 2004. The Petition was dismissed because the Petition was allegedly incomplete, since the date-stamped postcard receipt cited as supporting evidence with the Petition could not be located. The Office requested that Petitioners re-submit another copy of the date-stamped postcard receipt and stated that the application file would be retained in the Office of Petitions until the date-stamped postcard receipt was re-submitted.

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Pursuant to the USPTO's request, Applicants enclose herewith copies of the front and back sides of date-stamped Return Postcard Receipt, which was originally deposited by Applicants with the application papers with the United States Postal Service "Express Mail Post Office to Addressee" (Express Mail Label No. EV 332 430 455 US) on January 12, 2004 and which was date-stamped as received by the USPTO on January 21, 2004.

A "Notice to File Missing Parts of Nonprovisional Application" was mailed from the USPTO in the above-referenced application on September 16, 2004. This Notice indicated that two pages of the application (pages 74 and 75) appeared to be missing from the instant application. Applicants assert that a complete copy of the instant application, which included a total of 80 pages (including pages 74 and 75 of the specification), was filed with the USPTO on January 12, 2004. All 80 pages of the instant application were deposited with the United States Postal Service "Express Mail Post Office to Addressee" under 37 CFR § 1.10 on January 12, 2004 using Express Mail Label No. EV 332 430 455 US in an envelope addressed to "Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450," as shown by the enclosed copy of the Return Postcard that accompanied the application papers. This Return Postcard was date-stamped as received by the USPTO on January 21, 2004 and specifically shows the USPTO notation assigning serial number 10/756,813 to the instant application. This Return Postcard specifically notes that the following items were deposited with United States Postal Service "Express Mail Post Office to Addressee" using Express Mail Label No. EV 332 430 455 US on January 12, 2004 and received by the USPTO on January 21, 2004: 75 pages of the specification, four pages of claims, and a one page Abstract (for a total of 80 pages), the "Utility Patent Application Transmittal – No Fee Version" document (one page), Application Data Sheet (4 pages), Preliminary Amendment (3 pages), and Return Postcard. The Return Postcard date-stamped by the USPTO is *prima facie* evidence that the Office received all 80 pages of the application, including allegedly missing pages 74 and 75, on January 21, 2004 and establishes that pages 74 and 75 are entitled to the January 12, 2004 filing date, which is the date the application papers were deposited with United States Postal Service "Express Mail Post Office to Addressee" using Express Mail Label No. EV 332 430 455 US.

The "Utility Patent Application Transmittal – No Fee Version" document, which was deposited with United States Postal Service "Express Mail Post Office to Addressee" (Express Mail Label No. EV 332 430 455 US) with the application papers on January 12, 2004 also specifically

indicates that a total of 80 pages of the description (including the specification, claims, and abstract) of the application, which included pages 74 and 75, were submitted and deposited with United States Postal Service "Express Mail Post Office to Addressee" (Express Mail Label No. EV 332 430 455 US) with the application papers on January 12, 2004.

As specifically indicated in the Application Data Sheet and Preliminary Amendment filed with the instant application U.S. Application No. 10/756,813 on January 12, 2004, the instant application is a continuation application of U.S. Application No. 10/389,283, filed March 14, 2003, which is a continuation of U.S. Application No. 10/190,414, filed July 3, 2002, which is a continuation of U.S. Application No. 09/611,234, filed July 6, 2000, which claims the benefit of U.S. Provisional Application No. 60/160,693, filed October 21, 1999, U.S. Provisional Application No. 60/189,503, filed March 15, 2000, U.S. Provisional Application No. 60/207,793, filed May 30, 2000, Danish Application No. PA 1999 00988, filed July 7, 1999, Danish Application No. PA 1999 01196, filed August 27, 1999, Danish Application No. PA 2000 00339, filed March 2, 2000, and Danish Application No. PA 2000 00804, filed May 18, 2000. As shown in the Preliminary Amendment, the specification of the instant application USSN 10/756,813 was amended to specifically incorporate by reference in the instant application each of the above applications in their entireties for all purposes.

Thus, the specifications of each of the parent application USSN 10/389,283, grandparent application USSN 10/190,414, and great-grandparent application USSN 09/611,234 are identical to one another and to the instant application USSN 10/756,813, and each such parent, grandparent, and great-grandparent application also contained pages 74 and 75 of the specification at the time of filing.

Applicants respectfully submit that pages 74 and 75 of the specification of the instant application (which the Office has indicated appear to be missing) were deposited with the USPTO with the application papers on January 12, 2004, as shown by the evidence presented herewith. Pages 74 and 75 of the specification of the instant application are entitled to the application filing date of January 12, 2004.

Based upon the evidence submitted herewith and in light of this Petition, Applicants respectfully request that pages 74 and 75 be included with the instant application USSN 10/756,813 and accorded the filing date of January 12, 2004. If the Office cannot locate originally submitted pages 74 and 75, it may obtain copies of pages 74 and 75 from the parent application USSN

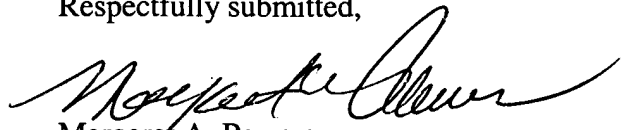
10/389,283, grandparent application USSN 10/190,414, or great-grandparent application USSN 09/611,234. For the convenience of the Office, Applicants enclose herewith copies of pages 74 and 75 herewith, which pages were filed with the instant application on January 12, 2004. The submission of these pages is simply for the convenience of the Office and does not constitute acceptance by Applicants of the date of such submission as the application filing date. Rather, pages 74 and 75 were submitted on and are entitled to the application filing date of January 12, 2004.

An original declaration by the inventors was submitted in great-grandparent application USSN 09/611,234, and a copy of this declaration was submitted in grandparent application USSN 10/190,414 and parent application USSN 10/389,283. A copy of this same declaration is being submitted herewith, since the instant application is a continuation of USSN 10/389,283, which is a continuation of USSN 10/190, 414, which is a continuation of USSN 09/611,234.

The original Petition filed on October 20, 2004 was accompanied a petition fee as set forth in 37 CFR § 1.17(i). If any additional fee or credit is due for this reconsideration of the dismissal of the-submission of the Petition, please charge or credit Account No. <sup>SW</sup>05-0990.

This Petition is being timely filed within two months of the date of mailing of the Notice of the Decision on the originally submitted Petition mailed by the USPTO on December 30, 2004. Prompt resolution of this matter is respectfully requested. If the Office has any questions or requires further clarification in this matter, please telephone the undersigned at 650-298-5809.

Respectfully submitted,



Margaret A. Powers  
Attorney for Applicants  
Reg. No. 39,804

Dated: January 17, 2005  
MAXYGEN, INC.  
Intellectual Property Department  
515 Galveston Drive  
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COPY

SERIAL NO: Unassigned DATE FILED: 12-Jan-2004 DKT. NO.: 0201us622 ATTY: MAP

TITLE: A Method for Preparing Modified Polypeptides

APPLICANT: Torben Halkier et al.

DATE MAILED/HAND DELIVERED: January 12, 2004

☐ CERTIFICATE OF MAILING

☒ EXPRESS MAIL LABEL NO. EV 332 430 455 US

**THE U.S. PATENT AND TRADEMARK OFFICE ACKNOWLEDGES RECEIPT OF:**

- ☒ (75) pgs Spec; (4) pgs Claims; (1) Abstract
- ☒ Utility Patent Application Transmittal – No Fee Version (1 pg)
- ☒ Application Data Entry Sheet (4 pgs)
- ☒ Preliminary Amendment (3 pgs)
- ☒ Return Postcard

17497 U.S. PTO  
10/756813



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